

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Consumer Financial Protection Bureau,

Plaintiff,

v.

Navient Corporation, *et al.*,

Defendants.

Case No. 3:17-CV-00101-RDM
(Hon. Robert D. Mariani)

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PLAINTIFF'S NOTICE OF RECENT AUTHORITY

Plaintiff Consumer Financial Protection Bureau (“Bureau”) submits this Notice to inform the Court of three recent decisions relevant to the Court’s adjudication of Defendants’ pending Motion for Judgment on the Pleadings (Doc. 504).

In two of those cases, the courts considered the Bureau’s ratification of pending enforcement actions in the wake of the Supreme Court’s decision in *Seila Law LLC v. CFPB*, 140 S. Ct. 2183 (2020). Just like the two decisions that the Bureau attached to its September 4, 2020, Notice of Recent Authority (Doc. 535), these new cases hold that the Director’s ratifications are valid, and that ratification resolves any constitutional problem caused by the for-cause removal provision in the Consumer Financial Protection Act, a provision that the Supreme Court held invalid, but severable. The third case, which is from the Second Circuit, vacates a

district court decision relied on by Defendants, and rejects the argument that ratification cannot remedy the Article II problem caused by the for-cause removal provision.

First, in *BCFP v. Citizens Bank, N.A.*, --- F. Supp. 3d ---, 2020 WL 7042251 (D.R.I.), the court rejected defendant’s argument that, because the Bureau filed its complaint before the Supreme Court’s decision in *Seila Law*, the Bureau lacked Article II authority to bring the case. The court held that the only injury defendant suffered “is that the President – but for the statutory restrictions – might have removed the Director in order to reverse her enforcement decision in this case, or that a Director fully accountable to the President might have behaved differently. Ratification resolves those possibilities.” *Id.* at *10. The court held that the Director’s “ratification is a sufficient remedy for the constitutional violation.” *Id.* at *7. The decision is attached as Exhibit 1.

Second, on November 30, 2020, the court in *BCFP v. Fair Collections & Outsourcing, Inc.*, No. 8:19-cv-02817, 2020 WL 7043847 (D. Md.), denied a motion to dismiss on similar grounds and for similar reasons. With respect to ratification, the court held that “the current CFPB Director properly ratified the enforcement action,” and that, as a result, dismissal was not warranted. *Id.* at *5-*7. The court also rejected the argument that the Director’s ratification was premature because it occurred before the Supreme Court issued its judgment in

Seila Law. The court held that the Bureau’s continued prosecution of this case after the Supreme Court issued its judgment was sufficient to demonstrate ratification.

Id. at *7. The decision is attached as Exhibit 2.

Third, on October 30, 2020, the Second Circuit vacated the decision in *CFPB v. RD Legal Funding, LLC*, 332 F. Supp. 3d 729, 784-85 (S.D.N.Y. 2018), on which Defendants rely. RD Legal argued that the district court’s dismissal of the Bureau’s claims should be affirmed because of the Article II problem at the time the Bureau filed suit. The Second Circuit did not agree, instead remanding for the district court to address the Director’s post-*Seila Law* ratification. 828 F. App’x 68, 70 (2d Cir. 2020).

Dated: December 7, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 7, 2020, I filed the foregoing document with the Court's ECF system, which will send notification of such filing to counsel for Defendants.

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